

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3504 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MOTILAL CHIMNAJI HARIGAR

Versus

AHMEDABAD MUNICIPAL TRANSPORT SERVICE & ORS.

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Appearance:

MR HK RATHOD for Petitioner

MR NA PATEL for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/08/96

#### ORAL JUDGMENT

The petitioner, who was working in the respondent-Transport Service, filed this petition before this Court for correction of his recorded date of birth in service record.

2. The petitioner joined the service in the workshop of the respondent as Hammerman in the year 1952. The petitioner was promoted as Blacksmith and he retired on that post. When the petitioner joined the service in the

workshop of respondent-Transport Service, the application form was not filled up by him. The petitioner alleges himself to be completely illiterate person, but he further alleged that he learned to sign his name, by practice and therefore he is now able to sign his name. The petitioner has further stated that he is unable to read Gujarati and English. The petitioner puts blame on respondent that when he joined the service of respondent, the respondent had not demanded from him any birth certificate or any other evidence in support of his date of birth and the medical examination was also not taken as per Rules of the respondent-Transport Service. The petitioner has made a statement in para-3 of this Special Civil Application that he submitted one medical certificate from the private Doctor for the purpose of health which was given after one year passed in service. In the said certificate, his approximate age has been mentioned by the Doctor on the basis of certain questions asked by the Doctor about his age. That was the approximate age of the petitioner mentioned in the certificate issued by the Doctor. In the month of June 1983, the petitioner came to know from one worker that he will be retired from July 1983. The petitioner is the resident of Balatora village in Rajasthan and he was born there. He, therefore went to that village and inquired about his date of birth, and from the said village he found that he was born on 8.12.1927. The petitioner obtained a birth certificate from the Baratora village on 22.6.83. Thereafter he applied to the Chairman of the Transport Service inter-alia stating that his recorded date of birth in the service record be corrected as per the birth certificate enclosed therein. The petitioner has given that application on 27.6.83. The respondent No.3 has replied that application under its letter dated 29.6.83 in which the petitioner was informed that the application of the petitioner for change in the date of birth will not be considered because it was time barred in view of the Circular No.63 dated 27.7.82. A copy of the alleged birth certificate is submitted by the petitioner as annexure 'B' to this Special Civil Application. The petitioner was ordered to be retired with effect from 31st July 1983 under the notice which was received by him admittedly on 7.7.83. The petitioner has come up with the case after this notice that he, on inquiry made, came to know that his date of birth has been considered as 8.7.1925 on the basis of medical certificate. Hence this Special Civil Application before this Court.

3. The respondent contested this petition by filing an affidavit-in-reply. After filing of this Special

Civil Application, it appears that the petitioner prayed for the amendment of the writ petition and the same has been allowed. Under this amendment the petitioner has also challenged the Circular No.63 dated 27.7.82.

4. The learned counsel for the petitioner contended that the date of birth which has been recorded in the service record of the petitioner only on the basis of medical certificate is illegal and arbitrary. It has next been contended that it was the duty of the respondents to ask for the correct date of the petitioner, which has not been done in the present case. Shri Rathod, learned counsel for the petitioner, then contended that rejection of application by the respondent, which has been made by the petitioner for correction of his date of birth only on the ground that it has been filed beyond the period prescribed in the Circular No.63 dated 27.7.82, is not tenable. Rejection of application only on the ground of delay in filing of the same is arbitrary. Thus, challenge has been made to the Circular dated 27.7.82 on the ground that the right of an employee for correction of his date of birth, could not have been deprived only on the ground that the application for the same has not been filed within the prescribed time.

5. On the other hand, the learned counsel for the respondents contended that the date of birth of the petitioner has been correctly recorded in the service record on the basis of medical certificate which has been produced by the petitioner himself. It has next been contended that the date of birth which has been recorded in the service book of the petitioner has also been signed by petitioner himself in token of the same to be correct. Certain limitation has rightly been prescribed in the said Circular. Leaving apart the limitation prescribed in the Circular for filing of the application, the learned counsel for the respondents contended that the petitioner has moved an application for correction of his date of birth at the fag end of his retirement on the basis of his recorded date of birth. Retirement of the petitioner was due on 31.7.83 and the application for correction in the recorded date of birth has been made by him in the month of June 1983. The plea has been taken by the petitioner that he was not aware of the said Circular etc. and challenge to the Circular is unjustified and uncalled for because the petitioner has never prayed for change in his recorded date of birth after his appointment in the respondent-Transport Service. He has moved this application for correction after about 30 years of his entry in service.

6. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

7. There is sufficient merit in the contention of the learned counsel for the respondents that the plea of ignorance of the said Circular of the respondent as well as challenge to the said Circular is unjustified and uncalled for. The petitioner has filed the application for correction of his recorded date of birth only when he came to know that the respondent is going to retire him on attaining his age of superannuation. This delay in filing of the application itself is sufficient for rejecting the claim of the petitioner. It is undisputed fact that in the service record of the petitioner, his recorded date of birth is 8.7.1925 and this entry of date of birth is signed by the petitioner in token of its correctness. It is also not disputed that prior to 27.6.83, the petitioner has not filed any application for correction of his recorded date of birth. So there is no dispute in the present case on the aforesaid. As stated earlier, the application for correction of the date of birth has been filed by the petitioner on 27.6.83 after obtaining the birth certificate, annexure 'B' from the Sub Divisional Magistrate, Balatora, Rajasthan, dated 22.6.83. On the basis of this certificate, the petitioner prayed for change of his recorded date of birth in the service record.

8. The respondents have rejected the claim of the petitioner on the ground that the application for correction of his date of birth has not been submitted within the time limit as prescribed under the Circular No.63 dated 27.7.83. But the fact remains that the petitioner submitted the application for correction of his recorded date of birth after more than 31 years of service. The petitioner has tried to make out a case of ignorance of the Circular aforesaid, but the verification of the contents made in this writ petition are based to the best of his knowledge, information and belief. In view of this verification of the contents of the petition, it is difficult to believe this averment of the petitioner. The knowledge of the said Circular otherwise also has no weight or bearing in the present case. The petitioner was ignorant of the Circular as per his own case. In case it would have been a case of incorrect date of birth recorded in the service record, the petitioner would have made an application at the earliest and not at such a belated stage. The plea that he was ignorant of the Circular is also of no significance because for making grievance regarding incorrect recorded

date of birth, he should have taken steps, which has not been done in the present case. The entry of date of birth of the petitioner in the service book was also duly signed by him. It is a different matter that the petitioner has come up with a case that he is illiterate and he was not knowing these things, but the fact remains that he has signed the entry of his date of birth made in his service record. The petitioner, merely on the basis of what he stated that he is illiterate or ignorant, cannot be given benefit or latitude to approach its employer for correction of date of birth at such a belated stage and that too at the fag end of his service. The claim of the petitioner do not seem to be genuine. The petitioner has approached this Court after about 31-32 years of his service. Yet, there is another reason on which the case of the petitioner cannot be accepted. The petitioner has not produced on record of this Special Civil Application or even before the respondents, any documents to show and establish that his date of birth is 8.12.1927, prior to June 1983. In absence of such material, it is difficult to accept this claim of the petitioner. In these circumstances, even if the petitioner, having the knowledge of the Circular No.63 of the respondents, would have applied for correction in his recorded date of birth, his claim was not likely to be accepted. If the petitioner would have produced some material on record of date earlier in point of the said Circular, then there may be some substance in the say of the petitioner that he was not having knowledge of this Circular or that this Circular was not put up on notice board or it was not circulated among the employees including the petitioner. This plea appears to have been taken by the petitioner only when the respondent has rejected his application by giving reference to the Circular No.63.

9. In public service, normally at the time of entry in service, the date of exit of an employee, i.e. the date of superannuation, is also fixed. That is the main reason why the date of birth of an employee is recorded in his service book. In the present case also it has been done. The case of the petitioner certainly falls in the category of cases as observed by the Hon'ble Supreme Court in the case of Secretary And Commissioner, Home Department & Ors. v. R. Kirubakaran, reported in 1994 Supp (1) SCC 155. In para-4 of this judgment, the Supreme Court observed that;

4. .... But, of late a trend can be noticed,  
that many public servants, on the eve of their  
retirement raise a dispute about their dates of

birth recorded in the service records, by either invoking the jurisdiction of the High Courts under Article 226 of the Constitution or by filing applications before the Administrative Tribunals concerned, for adjudication as to whether the dates of birth recorded were correct or not."

In the case of State of Assam v. Daksha Prasad Deka, reported in 1970(3) SCC 624, the Supreme Court said that the date of the compulsory retirement;

"... must in our judgment, be determined on the basis of service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure."

The Supreme Court, in the case of Secretary And Commissioner, Home Department & Ors. v. R. Kirubakaran (Supra), after referring to its own earlier decisions

observed in para-6 as under:

"In the case of Executive Engineer v. Rangadhar Mallik (1993 Supp (1) 763) Rule 65 of the Orissa General Finance Rules, was examined which provides that representation made for correction of date of birth near about the time of superannuation shall not be entertained. The respondent in that case was appointed on November 16, 1968. On September 9, 1986, for the first time, he made a representation for changing his date of birth in his service register. The Tribunal issued a direction as sought for by the respondent. This Court set aside the order of the Tribunal saying that the claim of the respondent that his date of birth was November 27, 1938 instead of November 27, 1928 should not have been accepted on the basis of the documents produced in support of the said claim, because the date of birth was recorded as per document produced by the said respondent at the time of his appointment and he had also put his signature in the service roll accepting his date of birth as November 27, 1928. The said respondent did not take any step nor make any representation for correcting his date of birth till September 9,

1966. Recently, in the case of Union of India v. Harnam Singh ( (1993) 2 SCC 162) it was said: (SCCp.167, para 7), "A government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is not period of limitation prescribed for seeking correction of date of birth, the government servant must do so without any reasonable delay."

Thus, insistence is on not to entertain the applications which have been made on the eve of retirement. Recently in the case of Burn Standard Co. Ltd. & Ors. v. Shri Dinabandhu Majumdar & Anr., reported in JT 1995(4) SC 23, the Supreme Court, considering the case of an employee who made an application for correction of his date of birth in service book at a very belated stage, observed;

Having gone through the order of the learned single Judge, we are unable to think that the discretionary extraordinary jurisdiction vested in the High Court under Article 226 of the Constitution has been properly exercised by him in issuing a writ in the nature of mandamus directing appellant-1 to correct the date of birth of respondent-1 in his 'Service and Leave Record' and allow him to continue in service beyond the date when he should have retired having regard to his age as entered in his 'Service and Leave Record'. The Division Bench of the High Court also, we are inclined to think, has failed to see that the learned single judge had not properly exercised his writ jurisdiction in granting relief to respondent-1, if regard is had to the nature of relief which he had sought for.

The importance of the date of birth of an employee given to his employer and accepted as correct by the latter and entered in the 'Service and Leave Record' of the former, cannot be underestimated. That is so for the reason that the employees' service with the employer has to be necessarily regulated according to such date

of birth. Therefore, when a person is taken into service on appointment, he would be required by his employer to declare his correct date of birth and support the same by production of appropriate certificates or documents, if any. Even there the persons so appointed fail to produce the certificates or documents in proof of their date of birth, they would be required to affix their thumb impression or signature in authentication of their declared ages or dates of birth. When, on the basis of such declaration made or certificates produced by the employee an entry is made of his date of birth in his 'Service and Leave Record' to be opened, that will amount to acceptance by the employer of such date of birth, as correct, be it the Government or its instrumentality. When such entry is made in Service Record of the employee the only way in which the employer, Government or its instrumentality can get over such entry, because of subsequent disclosures as to its incorrectness, is to hold an inquiry into the matter by affording an opportunity to the employee concerned to have his say in the matter. But when once the employer, the Government or the instrumentality concerned accepts the date of birth of an employee as declared by him and supported by certificates of documents produced by him and allows him to enter into its service and continue on such basis, is it open to such employee to claim that the date of birth declared and authenticated by him was incorrect and, therefore, the employer, be it the Government or its instrumentality, should correct his date of birth in his 'Service and Leave Record' according

to what he claims to be true and if the Government or its instrumentality concerned refuses to accept such claim, can the High Court in exercise of its discretionary extraordinary writ jurisdiction entertain a writ application, to consider the merit of such claim? "

The Supreme Court has further observed in this case;

"When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional



requirements for the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribed a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of this date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy."

10. Taking into consideration totality of the facts of the case, I am satisfied that it is not a fit case where this Court should entertain the application of the petitioner which has been filed on the eve of his

retirement, for correction of date of birth recorded in his service record.

11. The next question which calls for consideration is whether the evidence which has been produced by the petitioner for seeking a change in his recorded date of birth is sufficient to accept his claim or not ? The Supreme Court in the case of Secretary And Commissioner, Home Department And Ors. v. R. Kirubakaran (Supra) held that the onus to prove that the recorded date of birth was wrong, lies on the applicant. While considering the question of nature of evidence required for correction of recorded date of birth of employee in the service record, the Supreme Court, in the above case held that;

" correction of recorded date of birth of public servant is permissible, but that should not be done in a casual manner. Any such order must be passed on materials produced by the public servant from which the irresistible conclusion follows that the date of birth recorded in the service book was incorrect."

The Supreme Court, in this case, further observed that;

"unless a clear case, on the basis of material held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has

been made in accordance with the procedure prescribed, and within the time fixed by any rule or order."

12. The certificate which has been produced by the petitioner of Sub Divisional Magistrate, Baratora, Rajasthan, was issued to the petitioner on 22.6.83, when the petitioner was due for retirement within a few days. It is the document which has been procured by the petitioner for taking some benefit. It is a certificate procured from the authorized officer of birth and death registration. The document is extracted as under:

The substance of the document is that the application filed by the petitioner to make necessary entry in the birth registration certificate regarding the date of birth has been considered and direction has been issued that after charging late fees, entry may be made in the relevant register. On his own application, the petitioner has prayed for entry of his date of birth in the said Register. The date of birth, he prayed for to be entered, is his own declaration. This document cannot be said or termed as material which can be accepted as conclusive in nature. This document is not even sufficient to make the petitioner's claim plausible. It is a document created by the petitioner and it can be conveniently put in the category of evidence manufactured by the petitioner in his own favour. This certificate produced by the petitioner in support of his claim for correction of his recorded date of birth is not sufficient to correct his recorded date of birth in the service book. From this certificate, irresistible conclusion does not follow that the date of birth recorded of the petitioner in his service book is incorrect. In view of these facts which have come on record, I am satisfied that no injustice is likely to be caused to the petitioner in case correction of date of birth is not made. On the other hand, it is a case where the petitioner, by creating the evidence in his own favour, has made a claim. The petitioner has to produce the evidence in support of his claim which may amount to irrefutable proof relating to his correct date of birth. The Supreme Court, in the case of Secretary And Commissioner, Home Department And Ors. v. R. Kirubakaran (Supra), has observed that;

"... in many cases, it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of dates of birth in the service book....."

The Supreme Court, in this case, has further held that;

"... By this process, it has come to to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation..."

The Supreme Court, therefore given out a note of caution in this judgment that;

"... The Court or the Tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior..."

13. The case of the petitioner certainly falls in the category of the case as given out by the Supreme Court. The petitioner has made an attempt to continue in the service beyond his date of superannuation by producing such document which is created for his own benefit. In this case, though interim relief has not been granted by the petitioner to make an attempt to continue in the service beyond the age of superannuation as the petitioner has made a prayer for grant of interim relief in this petition.

14. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. The petitioner is directed to pay Rs.1,000/- by way of costs of this petition to the respondents.

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(sunil)